IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.982 OF 2006

M/s.Foursquare Developers & Ors. .. Petitioners.
Vs.
Dahisar Co-op. Hsg.
Soc. Ltd. & Anr. .. Respondents.

Mr.Dinesh Purandare i/b M/s.Prakash & Co. for the petitioners.
Mr.S.V.More A.P.P. for the State.

CORAM : D.B.BHOSALE, J.

DATED : 12TH JUNE, 2006

P.C.:

. Heard learned counsel for the parties.

2. By this writ petition, the petitioners have prayed for quashing and setting aside the order of issue of process dated 16th December, 2004 passed by the learned Metropolitan Magistrate, 26th Court at Borivali, Mumbai and the order dated 28th March, 2006 passed by the Sessions Court in revision application No.484 of 2005 wherein the order passed by the Magistrate was under challenge. Respondent No.1 has filed a complaint against the petitioners under the provisions of the Maharashtra Ownership of Flats (Regularization of the permission of construction sale management and transfer) Act, 1963 (for short "the Act"). The case set up by the complainant is that in

1988 the the petitioners declared a scheme of construction of residential building on C.T.S.No.1515 village Dahisar, Dist.Borivali, Mumbai which was joined by 160 intending purchasers. The construction of the building was commenced in the same year. After construction got over it appears that the society was registered under the provisions of the Maharashtra Co-operative Societies Act.

3. The respondent-society filed a private complaint bearing case No.429/SS/04 before the Metropolitan Magistrate, 26th Court at Borivali, Mumbai on the allegations that the petitioners have failed to comply with and contravened the provisions of sections 4, 5, 6, 11 and have thereby committed offence under section 13 and 14 of the Act. The learned Magistrate issued the process on 16.12.2004 which was challenged in revision application No.484 of 2005. The revision was dismissed by the order aforestated. Hence the petitioners have approached this court.

4. The complainant has alleged non compliance of section 4, 5, 6 and 11 on the following allegations: firstly, that the petitioners-developer have not got the agreement for flat purchase registered and have thereby violated the provisions of section 4 of the

Act. Secondly, the petitioners were required to maintain separate accounts for the amount received from the flat purchasers from time to time and were also required to give accounts to the society in respect of the expenses incurred. The petitioners have failed to do so and thereby have committed an offence under section 5 of the Act. Thirdly, after registration of the society, no steps have been taken towards execution of the conveyance of the plot in favour of the society and further documents pertaining to registration of the society have also not been handed over to the society and this amounts to offence under section 11 of the Act, and fourthly, it was duty of the petitioners to pay all outgoing taxes till the transfer of property and since the petitioners have failed to pay the taxes as required under section 6 of the Act they have committed the offence.

5. I perused the judgment and other material placed before me and heard learned counsel appearing for the petitioners at length. The learned counsel for the petitioners argued this petition as if it was an appeal against conviction expecting me to go through all the documents referred to in the petition and annexed to the petition. I did go through the documents which he wanted me to look into. However, he failed to show me the documents which I wanted to

see in the light of the allegations made against the petitioners of non compliance and contravention of the provisions of section 4, 5 and 6 in particular. In the writ petition, the petitioners have made reference to several documents. For instance the accounts which the petitioners were required to maintain and to supply the copies thereof to the members of the society under section 5 of the Act. It is stated in the petition that the accounts were approved by the general body in presence of the representative of the co-operative department. The petitioners, however, could not produce even a copy of those accounts for my perusal. It is further clear that the petitioners have failed to pay all outgoing taxes till the registration of the society which is also a requirement under section 6 of the Act. Under section 6 of the Act the responsibility is cast on the builder to pay all the outgoing taxes till the transfer of property. Admittedly, the property has not been transferred in the name of society till this date. The outstandings prior to the registration of the society by way of taxes which the petitioners were required to pay was Rs.18,00,000/-. It is clear that the dues of taxes were not paid. The petitioners could not produce a single document to show that prior to registration of the society the taxes were paid by them. Similarly, under section 4 of the Act every

agreement between the intending purchaser and the builder is required to be registered and it is the statutory duty of the builder to see that the agreements are registered. In the present case, admittedly, the agreements were executed and entire amount was paid by the intending purchasers long back to the builder and even the society of the intending purchaser was registered, however, not a single agreement between the members of the society and the builder has been registered till this date. It is against this backdrop I am satisfied that there is sufficient material on record to proceed against the builder. No case for quashing the process issued on 16.12.2004 by the learned Metropolitan Magistrate, 26th Court, Borivali, Mumbai in C.C.No.429/SS/2004 is made out. The defence of the petitioners will be examined during trial. The writ petition, therefore, fails and is dismissed as such. The trial Court shall proceed with the complaint uninfluenced by the observations made in this order as well as in the impugned order dated 28.3.2004 passed by the Sessions Court.

(D.B.Bhosale, J.)